REMARKS

By this amendment, claims 24, 25, 29, 38, 43, 44, 46, 48, 67, 68, and 173 have been amended and new claims 174-202 have been added. Claims 1-23, 33-37, 39-42, 55-61, 63, 64, 75-82, 84, 85, and 87-172 that were previously withdrawn from consideration as being drawn to a non-elected species have been cancelled without prejudice or disclaimer. Applicant reserves the right to pursue these claims in a related application. Accordingly, upon entry of this amendment, claims 24-32, 38, 43-54, 62, 65-74, 83, 86, and 173-202 will be pending in this application. No new matter has been introduced by this amendment. Of the pending claims, new claims 174-180, 182-187, 189-194, 196-199, and 201 are drawn to the elected subject matter of previously elected species XIII. New claims 181, 188, 195, 200, and 202 are drawn to non-elected subject matter, and therefore, are withdrawn from consideration as directed to a non-elected species.

In the outstanding Final Office Action, the restriction requirement was made final; claims 24, 29, 46, and 68 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite; claims 24-31, 38, 43, 44, 46-50, 54, 62, 65, 67-71, 83, 86, and 173 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,098,254 to Becicka et al. ("Becicka"); and claims 32, 45, 51-53, 66, and 72-74 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Becicka. Applicant disagrees with the rejections, and maintains that the claims as previously presented are patentable. However, Applicant has amended the independent claims in an effort to further prosecution. Applicant reserves the right to pursue the subject matter of the claims prior to amendment in a related application.

In the outstanding Office Action, the Examiner made final the restriction requirement. Applicant continues to traverse the restriction requirement as being improper for at least the reasons stated in the Response to Restriction Requirement filed November 20, 2006, and Applicant reserves the right to petition the Director to withdraw the restriction requirement and request an Office Action on the examined claims as well as those which were subject to the improper restriction requirement.

With regard to the rejection of claims 24, 29, 46, and 68 under 35 U.S.C. § 112, second paragraph, Applicant has amended claims 24, 25, 38, 43, 44, 68, and 173, to provide antecedent basis for the claimed elements. Applicant has also amended claims 24 and 46 to positively identify the claimed elements. Accordingly, Applicant submits that these amendments remedy the alleged deficiencies under 35 U.S.C. § 112, second paragraph, and the rejection should be withdrawn.

The Rejection Under 35 U.S.C. § 102(b)

Applicant respectfully requests withdrawal of the rejection of claims 24-31, 38, 43, 44, 46-50, 54, 62, 65, 67-71, 83, 86, and 173 under 35 U.S.C. § 102(b) as being anticipated by Becicka. Applicant submits that Becicka does not teach every element of those claims, and thus, the rejection cannot be maintained. See M.P.E.P. § 2131.

Becicka discloses a palletizer that includes adjustable limit switches 32 and 42, first and second photodetectors 56 and 58, and first and second proximity detectors 62 and 64. See Becicka, column 2, lines 42 and 57; and column 3, lines 12, 17, 50, and 56. According to Becicka, "adjustable limit switch 32 is provided for sensing when the carriage 24 has reached a predetermined lower limit relative to the vertical column 16," and "adjustable limit switch 42 (FIG. 2) is provided for sensing when the 'Y' axis

assembly 18 has been extended to a predetermined limit." *See Id.* at column 2, lines

42-44 and 57-59. Further, "first photodetector 56 . . . counts the cartons 12 as each

enters the high-speed section 54," while "[a]s the cartons 12 pass the photodetector 58 .

. . this information is also provided to the control circuitry for detecting completion of a

row of the cartons 12." *See Id.* at column 3, lines 12-21. In addition, Becicka discloses

that "proximity detectors 62 and 64 function to sense the position of the hand assembly

20 relative to the cartons 12 already in place on the pallet 14." *See Id.* at column 4,

lines 1-3. Becicka then goes on to disclose that "[p]rogramming of the control system

involves entering various predetermined operational data, such as the number of the

cartons 12 per row; the orientation of each of the cartons 12 within the row, spacing (per

user requirements) between the adjacent cartons 12 within the row and the total number

of the cartons 12 for a fully loaded form of the pallet 14." *Id.* at column 4, lines 30-36.

Amended independent claim 24 recites, *inter alia*, "determining when the desired

area is filled using at least two of the height sensor, the length sensor, and the width

sensor." This limitation is not taught or suggested by Becicka. As evidenced by the

portions of Becicka cited in the preceding paragraph, first and second adjustable limit

switches 32 and 42, first and second photodetectors 56 and 58, and first and second

proximity detectors 62 and 64, serve to guide movement of a hand assembly 20 of the

palletizer in Becicka. They are not used to determine when the area above pallet 14 is

filled. Becicka specifically discloses that the total number of cartons 12 for a full load is

predetermined operational data that is programmed or entered into the control system.

See Becicka, column 4, lines 30-36. Since first and second adjustable limit switches 32

and 42, first and second photodetectors 56 and 58, and first and second proximity

detectors 62 and 64 are not used to determine when the area above pallet 14 is filled; and because it is clear from Becicka that the total number of cartons 12 is predetermined and programmed into the control system without relying on sensors, switches, or photodetectors, Becicka fails to teach or suggest "determining when the desired area is filled using at least two of the height sensor, the length sensor, and the width sensor," as recited in amended independent claim 24.

Amended independent claims 48, 67, and 173, while of different scope from amended independent claim 24, each recite similar features. For example, amended independent claims 48 and 67 each recite, *inter alia* , "automatically determining when the load is completely built using at least two of a height sensor, a length sensor, and a width sensor." Amended independent claim 173 recites, *inter alia*, "determining when the desired area is filled using at least two of the height sensor, the length sensor, and the width sensor." Thus, Becicka fails to anticipate or render obvious amended independent claims 48, 67, and 173 for at least reasons similar to those discussed above with respect to amended independent claim 24.

Claims 25-31, 38, 43, 44, 46, 47, 49, 50, 54, 62, 65, 68-71, 83, and 86, each depend from one of amended independent claims 24, 48, 67, and 173, and are allowable for at least the reasons stated above that amended independent claims 24, 48, 67, and 173 are allowable. In addition, each of the dependent claims recites unique combinations that are neither taught nor suggested by the cited art, and therefore each is also separately patentable.

The Rejection Under 35 U.S.C. § 103(a)

Applicant respectfully requests withdrawal of the rejection of claims 32, 45, 51-53, 66, and 72-74 under 35 U.S.C. § 103(a) as being unpatentable over Becicka. Applicant submits that the Examiner has failed to establish a *prima facie* case of obviousness with respect to those claims. *See* M.P.E.P. § 2143.

As discussed above, Becicka fails to teach or suggest each of the limitations in amended independent claims 24, 48, and 67, from which claims 32, 45, 51-53, 66, and 72-74 depend. Therefore, claims 32, 45, 51-53, 66, and 72-74 are allowable at least for the same reasons that amended independent claims 24, 48, and 67 are allowable.

Moreover, the Office Action does not provide any factual support for the conclusion that claims 32, 45, 51-53, 66, and 72-74 are obvious over Becicka. In the rejection of claims 32, 45, 51-53, 66, and 72-74, it is admitted that Becicka does not disclose each and every aspect of the claims. The rejection nonetheless goes on to state that Becicka renders the claims obvious without providing any factual support (e.g., relying only on what the Examiner calls "common engineering sense," and on alleged common knowledge in the art). *See* Office Action, pages 4 and 5. Such conclusory statements do not meet the requirements for proving a *prima facie* case of obviousness. See M.P.E.P. § 2142. Further, with respect to claims 51-53 and 72-74, Applicant disagrees with the Examiner's assertion that "[the] controller is programmable to accommodate for the loading of different size items on different layers of a single pallet load," and "[the] controller is programmable to accommodate for the loading of different size items on two different pallets," since neither assertion is supported by Becicka. Office Action, page 5. FIG. 1 of Becicka actually discloses items of the same

size, not different sizes as suggested by the Examiner. For at least these reasons,

Applicant submits that the rejection of claims 32, 45, 51-53, 66, and 72-74 is improper

and requests reconsideration of the rejection.

New Claims 174-202

New independent claim 174 is previously submitted claim 30 rewritten in

independent form. New independent claim 174 recites, *inter alia*, "[a] method of building

a load with product from an infeed area of a palletizer, the method comprising: defining

a desired area of a load to be filled with product by positioning a height sensor to set a

desired height of the load." The Examiner asserts on page 4 of the Office Action that

first proximity detector 62 of Becicka reads on the claimed height sensor. Applicant

respectfully disagrees.

Becicka discloses that "proximity sensors 62 and 64 function to sense the

position of the hand assembly 20 relative to the cartons 12 already in place on the pallet

14 . . . . Thus, the first proximity detector 62 senses when the height of the hand

assembly 20 is sufficient to provide vertical clearance between the cartons 12 already in

place on the pallet 14 and the cartons 12 in the grasp of the hand assembly 20."

Becicka, column 4, lines 1-10. Thus, Becicka discloses that first proximity detector 62 is

used to help hand assembly 20 avoid cartons 12, not to set a desired height of the load,

as suggested by the Examiner. Further, as discussed in the arguments pertaining to

amended independent claim 24, the dimensions of the load in Becicka are

predetermined, not determined or set using sensors. Also, as shown in FIG. 1 of

Becicka, none of first and second adjustable limit switches 32 and 42, first and second

photodetectors 56 and 58, and second proximity sensor 64, are positioned to set a

desired height of the load. Since none of the switches, sensors, and detectors in Becicka are positioned to set a desired height of the load, Becicka fails to teach or suggest, "[a] method of building a load with product from an infeed area of a palletizer, the method comprising: defining a desired area of a load to be filled with product by positioning a height sensor to set a desired height of the load," as recited in new independent claim 174.

New independent claim 176 is previously submitted claim 51 rewritten in independent form. New independent claim 176 recites, inter alia, "[a] method of building a load with product from an infeed area, the method comprising . . . automatically repeating the moving and depositing steps by repeating a single logic sequence for at least two consecutive moving and depositing steps; wherein the first moving and first depositing steps load a first product having a first size onto the load, and wherein the second moving and second depositing steps load a second product having a second size different from the first size onto the load." The Examiner asserts on page 5 of the Office Action that "it is obvious that Becicka et al. '254 . . . is programmable to accommodate for the loading of different size items on different layers of a single pallet load." However, this assertion is not supported by Becicka, which only shows items of a single size being loaded in FIG. 1. Nor does the Office Action provide any factual support for the Examiner's assertion. Such conclusory statements on the part of the Examiner do not meet the requirements for proving a prima facie case of obviousness. See M.P.E.P. § 2142. For at least this reason, Applicant submits that new independent claim 176 is allowable.

New independent claim 178 recites, *inter alia*, "[a] method of building a load with product from an infeed area of a palletizer, the method comprising: defining a desired spaced to be filled with product by physically establishing at least two of a height threshold, a length threshold, and a width threshold . . . automatically signaling that the desired space is filled when product reaches at least two of the height threshold, the length threshold, and the width threshold." Applicant submits that Becicka does not anticipate this claim because Becicka fails to teach or suggest at least these claim limitations. Thus, Becicka fails to anticipate or render obvious new independent claim 178.

New independent claim 182 recites, *inter alia*, "[a] method of building a load with product from an infeed area of a palletizer, the method comprising: defining boundaries of a desired area of a load to be filled with product by physically establishing at least two of a load height, a load length, and a load width . . . automatically signaling when the desired area is filled when product reaches at least two of the load height, the load length, and the load width." Applicant submits that Becicka does not anticipate this claim because Becicka fails to teach or suggest at least these claim limitations. Thus, Becicka fails to anticipate or render obvious new independent claim 182.

New independent claim 189 recites, *inter alia*, "[a] method of building a load with product from an infeed area of a palletizer, the method comprising: defining a desired area of a load to be filled with product by establishing physical markers delimiting at least two of a load height, a load length, and a load width . . . automatically signaling when the desired area is filled when product reaches at least two of the load height, the load length, and the load width." Applicant submits that Becicka does not anticipate this

claim because Becicka fails to teach or suggest at least these claim limitations. Thus, Becicka fails to anticipate or render obvious new independent claim 189.

New independent claim 196 recites, *inter alia*, "[a] method of building a load with product from an infeed area of a palletizer, the method comprising: defining a boundary to be filled in with product by physically setting at least two of a height dimension, a length dimension, and a width dimension of the load; automatically filling in the boundary with product, wherein the height dimension, the length dimension, and the width dimension of the load remain substantially constant as product characteristics vary; and automatically signaling that the boundary is filled in when product reaches at least two of the height dimension, the length dimension, and the width dimension of the load." Applicant submits that Becicka does not anticipate this claim because Becicka fails to teach or suggest these claim limitations. Thus, Becicka fails to anticipate or render obvious new independent claim 196.

New independent claim 201 recites, *inter alia*, "[a] method of building loads with product from an infeed area of a palletizer, the method comprising: defining a boundary of a desired area of a first load to be filled with product of a first size by physically delineating at least two of a desired height of the first load, a desired length of the first load, and a desired width of the first load; automatically filling the desired area with as much product of the first size as needed to meet the boundary; moving the first load away; and automatically filling the desired area with as much product of a second size different from the first size as needed to meet the boundary without adjusting the boundary." Applicant submits that Becicka does not anticipate this claim because

Becicka fails to teach or suggest these claim limitations. Thus, Becicka fails to anticipate or render obvious new independent claim 201.

Claims 175, 177, 179-181, 183-188, 190-195, 197-200, and 202, each depend from one of new independent claims 174, 176, 178, 182, 189, 196, and 201, and are allowable for at least the reasons stated above that new independent claims 174, 176, 178, 182, 189, 196, and 201 are allowable. In addition, each of the dependent claims recites unique combinations that are neither taught nor suggested by the cited art, and therefore each is also separately patentable.

Applicant requests that newly withdrawn claims 181, 188, 195, 200, and 202 be rejoined with the elected claims in this application. Claims 181, 188, 195, 200, and 202 all depend either directly or indirectly from one of new independent claims 174, 176, 178, 182, 189, 196, and 201, and thus, are allowable for at least the same reasons that independent claims 174, 176, 178, 182, 189, 196, and 201 are allowable. In addition, each of these withdrawn dependent claims recites unique combinations that are neither taught nor suggested by the cited art, and therefore each is also separately patentable.
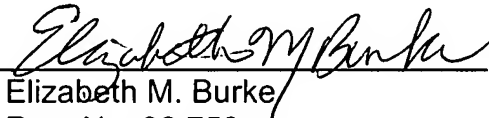
In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge

any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
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Dated: June 19, 2007   By: _____
                                    Elizabeth M. Burke/
                                    Reg. No. 38,758